



PLEASE NOTE

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CHAPTER C-22

CONTROVERTED ELECTIONS (PROVINCIAL) ACT

1. In this Act	Definitions
(a) “candidate” means any person elected to serve as a member, and any person who has been nominated as a candidate at an election;	candidate
(b) “corrupt practices” means acts in reference to elections, that are declared to be corrupt practices by this Act, or recognized as such by the common law of Parliament;	corrupt practices
(c) “court” means the Supreme Court or any judge thereof;	court
(d) “election” means the election of a member to serve in the Legislative Assembly;	election
(e) “electoral district” means a district of this province which for the purposes of elections is entitled to return a member or members;	electoral district
(f) “member” means a member of the Legislative Assembly;	member
(g) “petition” or “election petition” means a petition complaining of an undue return, or undue election of a member, or of no return or of a double return, or of matters contained in a special return made, or of any unlawful act by any candidate not returned, by which he is alleged to have become disqualified to sit in the Legislative Assembly;	petition
(h) “prescribed” means prescribed by this Act or by the rules of court made under this Act;	prescribed
(i) “rules of court” means rules made by the Supreme Court as herein provided;	rules of court
(j) “Speaker” means the Speaker of the Legislative Assembly, and when the office of Speaker is vacant then the Deputy Speaker or the Clerk of the Legislative Assembly, or other officer for the time being performing the duties of Clerk of the Legislative Assembly, as the case may be;	Speaker
(k) “summary trial court” means a court for the summary trial of any person charged with having committed corrupt practices at an election;	summary trial court
(l) “trial judge” means a judge of the court trying an election petition, or performing any duty to which the enactment in which the expression occurs has reference. R.S.P.E.I. 1974, Cap. C-20, s.1.	trial judge

Jurisdiction of court	2. The court shall, subject to this Act, have the same powers, jurisdiction and authority with reference to an election petition and the proceedings thereon, as if the petition were an ordinary action. R.S.P.E.I. 1974, Cap. C-20, s.2.
Application of Act	3. All elections of members of the Legislative Assembly are subject to this Act, and their validity shall only be contested in conformity with this Act. R.S.P.E.I. 1974, Cap. C-20, s.3.
Trials under Act, order in which heard	4. The rotation or order in which trials under this Act and any duties assigned by this Act to a single judge shall be undertaken or performed by the judges of the court, shall, if not prescribed by the laws of this province or the rules or practice of the court, be arranged by the judges of the court. R.S.P.E.I. 1974, Cap. C-20, s.4.
Petitions, who may present	5. A petition may be presented to the court by any of the following persons: (a) a person who had a right to vote at the election to which the petition relates; or (b) a candidate at such election. R.S.P.E.I. 1974, Cap. C-20, s.5.
Affidavit to accompany petition	6. At the time of the presentation of the petition there shall also be presented therewith an affidavit, by the petitioner, that he has good reason to believe and verily does believe that the several allegations contained in the said petition are true; and, thereafter, should any elector be substituted for the petitioner, such elector, before being so substituted, shall make and file an affidavit to the same effect. R.S.P.E.I. 1974, Cap. C-20, s.6.
Objections by sitting member on further proceedings	7. Nothing herein contained shall prevent the sitting member objecting by his preliminary objections to any further proceeding on the petition, by reason of the ineligibility or disqualification of the petitioner, or from proving on the trial of any petition under this Act, complaining of an undue return and claiming the seat for any person, that such person was not duly elected. R.S.P.E.I. 1974, Cap. C-20, s.7.
Order compelling return to be made	8. Whenever a petition under this Act complaining of no return is presented, an order may be made thereon by the court compelling a return to be made, or the court may allow such petition to be tried in the manner herein provided with respect to ordinary election petitions. R.S.P.E.I. 1974, Cap. C-20, s.8.
Returning officer, conduct complained of in petition	9. Whenever an election petition complains of the conduct of any returning officer, such returning officer shall, for all the purposes of this Act, except the admission of respondents in his place, be deemed to be a respondent. R.S.P.E.I. 1974, Cap. C-20, s.9.

10. Two or more candidates may be made respondents to the same petition, and their cases may, for the sake of convenience, be tried at the same time, but, as regards the security to be given on behalf of the petitioner, and for all other purposes of this Act, such petition shall be deemed to be a separate petition against each respondent. R.S.P.E.I. 1974, Cap. C-20, s.10.

Number of candidates who can be respondents

11. The petition presented under this Act may be in any prescribed form; but, if or in so far as no form is prescribed, it need not be in any particular form, but it must complain of the undue election or return of a member or that no return has been made, or that a double return has been made, or of matter contained in any special return made, or of some such unlawful act as aforesaid by a candidate not returned, and it must be signed by the petitioner or all the petitioners, if there are more than one. R.S.P.E.I. 1974, Cap. C-20, s.11.

Petition, form and contents

12. (1) The petition must be presented not later than thirty days after the day fixed for the nomination, in case the candidate or candidates have been declared elected on that day, and in other cases forty days after the holding of the poll, unless it questions the return or election upon an allegation of corrupt practices, and specially alleges a payment of money or other act of bribery by any member or on his account, with his privity, since the time of the taking of the votes of such electors in pursuance or in furtherance of such corrupt practice, in which case the petition may be presented at any time within thirty days after the date of such payment or act.

Date for presentation of petition

(2) In case any petition is presented at either time and on any ground, the sitting member whose election and return is petitioned against may, not later than fifteen days after service of such petition against his election and return, file a petition complaining of any unlawful and corrupt act by any candidate at the same election who was not returned, or by any agent of such candidate with his consent or privity. R.S.P.E.I. 1974, Cap. C-20, s.12.

Sitting member may complain of unlawful or corrupt act

13. Presentation of a petition shall be made by delivering it at the office of the Registrar of the Supreme Court at Charlottetown during office hours, or in any other prescribed manner. R.S.P.E.I. 1974, Cap. C-20, s.13; 1992, c.65, s.3.

Presentation of petition, procedure

14. (1) At the time of the presentation of the petition, security for the payment of all costs, charges and expenses that may become payable by the petitioner shall be given on behalf of the petitioner

(a) to any person summoned as a witness on his behalf;

(b) to the member whose election or return is complained of, who is hereinafter referred to as the respondent;

Security for payment of costs, with presentation

- (c) to the returning officer, if his conduct is complained of; or
- (d) to the candidate not elected, whose conduct is complained of as aforesaid.

Amount of security	(2) The security shall be to the amount of \$600, and shall be given by a deposit of money with the Registrar of the Supreme Court.
Currency of security	(3) The deposit referred to in subsection (2) shall not be valid unless it is made in gold coin, or in Government of Canada notes, or in bills of some chartered bank doing business in Canada. R.S.P.E.I. 1974, Cap. C-20, s.14; 1992, c.65, s.3.
Receipt for deposit	15. The prothonotary shall give a receipt for the deposit, which shall be evidence of the sufficiency thereof. R.S.P.E.I. 1974, Cap. C-20, s.15.
Service of election petition etc., manner of	16. An election petition under this Act, and notice of the date of the presentation thereof, and a copy of the deposit receipt shall be served, as nearly as possible in the manner in which an originating notice is served in civil actions, or in such other manner as may be prescribed. R.S.P.E.I. 1974, Cap. C-20, s.16.
Notice of presentation of petition served on respondent	17. Notice of the presentation of a petition under this Act, and of the security, accompanied with a copy of the petition, shall, within ten days after the day on which the petition has been presented, or within the prescribed time, or within such longer time as the court, under special circumstances of difficulty in effecting service, allows, be served on the respondent or respondents at some place within Prince Edward Island. R.S.P.E.I. 1974, Cap. C-20, s.17.
Substituted service	18. If service cannot be effected on the respondent or respondents personally within the time granted by the court, then service upon such other person, or in such manner, as the court on the application of the petitioner directs, shall be deemed good and sufficient service upon the respondent or respondents. R.S.P.E.I. 1974, Cap. C-20, s.18.
Preliminary objections to petition by respondent	19. Within five days after the service of the petition and the accompanying notice, the respondent may present, in writing, any preliminary objections or grounds of insufficiency which he has to urge against the petition or petitioner, or against any further proceeding thereon, and shall, in such case, at the same time, file a copy thereof for the petitioner and the court shall hear the parties upon such objections and grounds, and shall decide the same in a summary manner. R.S.P.E.I. 1974, Cap. C-20, s.19.
Written answer to petition, filing	20. (1) Within five days after the decision upon the preliminary objections, if presented and not allowed, or on the expiration of the time for presenting the same if none are presented, the respondent may file a

written answer to the petition together with a copy thereof for the petitioner.

(2) Whether an answer is or is not filed, the petition shall be held to be at issue after the expiration of the said five days, and the court may, at any time thereafter, upon the application of either party, fix some convenient time and place for the trial of the petition. R.S.P.E.I. 1974, Cap. C-20, s.20.

Trial of the petition,
fixing time and
place

21. (1) Any party to an election petition, whether petitioner or respondent may, at any time after the petition is at issue, before or pending the trial thereof, be examined by or before a judge or an examiner, in the manner hereinafter directed, by a party adverse in point of interest concerning any matter raised by such petition; and any party so examined may be further examined on his own behalf, in relation to any matter respecting which he has been examined in chief; but the explanatory examination shall be proceeded with immediately after the examination in chief, and not at any future period, except by leave of the court.

Preliminary
examination of
parties to trial

(2) When one of several petitioners or respondents has been so examined any other petitioner or respondent united in interest, may be examined on his own behalf or on behalf of those united with him in interest to the same extent as the party so examined. R.S.P.E.I. 1974, Cap. C-20, s.21.

Other persons
subject to
preliminary
examination

22. Whenever a petition has been filed claiming the seat for a candidate, such candidate, although not a party to the petition, may be orally examined as if he were a petitioner. R.S.P.E.I. 1974, Cap. C-20, s.22.

Oral examination of
candidate

23. (1) Any party to be examined orally, under this Act, shall be so examined by or before a judge, the prothonotary or special examiner of the court in which such election petition is pending, or before any barrister-at-law, named for the purpose by the court.

Court to hear oral
examination

(2) An examination referred to in subsection (1) shall take place in the presence of the parties, their counsel, agents or attorneys; and the party so examined orally shall be subject to cross-examination and re-examination; and such examination, cross-examination and re-examination shall be conducted as nearly as possible in the mode in use in the Supreme Court on the trial of an action. R.S.P.E.I. 1974, Cap. C-20, s.23.

Oral examination,
procedure

24. (1) The depositions taken upon any such oral examination as aforesaid, shall be taken down in writing by the examiner, not ordinarily by question and answer, but in the form of a narrative, and when

Depositions to be
taken in writing

completed shall be read over to the witness and signed by him, in the presence of the parties, or of such of them as think fit to attend.

Signing depositions (2) In case the witness refuses or is unable to sign said depositions, then the examiner shall sign the same.

Special matters stated to court (3) The examiner referred to in subsection (1) may upon every examination, state any special matter to the court if he thinks fit.

Particular questions and answers, put down by examiner (4) It shall be in the discretion of the examiner to put down any particular question or answer, if there appears to be any special reason for so doing and any question which is objected to shall, at the request of either party be noticed or referred to by the examiner in or upon the depositions; and he shall state his opinion thereon to the counsel, agents, attorneys or parties; and, if requested by either party he shall refer to such statement on the face of the depositions. R.S.P.E.I. 1974, Cap. C-20, s.24.

Original depositions, filing and copies **25.** When the examination before the examiner is concluded, the original depositions authenticated by the signature of the examiner, shall be transmitted by him to the office of the prothonotary to be there filed; and any party to the petition may have a copy thereof, or of any part or portion thereof, upon payment for the same in such manner as is prescribed by the court in that behalf. R.S.P.E.I. 1974, Cap. C-20, s.25.

Subpoena **26.** The attendance of a party or other person for oral examination or cross-examination before the examiner, may be compelled by a writ of subpoena in like manner as the attendance of such party or person, at the trial of the petition, may be compelled, and any party or person upon being served with such writ shall be bound to attend before the examiner; but such party or person shall be entitled to the like payment for attendance and expenses as if he had been subpoenaed to attend upon the trial. R.S.P.E.I. 1974, Cap. C-20, s.26.

Sheriff or jailer, duties **27.** The sheriff, jailer or other officer, having the custody of any prisoner, shall take the prisoner for examination before the examiner, if so ordered by the court. R.S.P.E.I. 1974, Cap. C-20, s.27.

Notice of oral examination **28.** Forty-eight hours notice of any oral examination or cross-examination shall be given to the opposite party or parties. R.S.P.E.I. 1974, Cap. C-20, s.28.

Contempt of court, grounds for **29.** (1) Any party or person who refuses or neglects to attend at the time and place appointed for his examination or cross-examination, or who refuses to be sworn or to answer any lawful question put to him by the examiner, or by any person entitled so to do, or his counsel, agent, attorney or solicitor, may be punished as for a contempt of court.

(2) If any witness demurs or objects to any question put to him, the question so put, and the demurrer or objection of the witness thereto shall be taken down by the examiner, and transmitted by him to the office of the prothonotary to be there filed; and the validity of such demurrer or objection shall be decided by the court and the costs of and occasioned by such demurrer or objection shall be in the discretion of the court. R.S.P.E.I. 1974, Cap. C-20, s.29.

Demurrer or
objection of witness
to question

30. Any party may, at the trial or other proceeding, use in evidence any part of the examination of the opposite party; but, in such case the court may look at the whole of the examination, and if it is of the opinion that any other part is so connected with the part to be so used that the last mentioned part ought not to be used without such other part, it may direct such other part to be put in evidence. R.S.P.E.I. 1974, Cap. C-20, s.30.

Evidence adduced
at examination, use
in trial

31. Any party to an election petition, whether petitioner or respondent, may on application, at any time after the petition is at issue, before or pending the trial thereof, obtain a judge's order requiring the adverse party to produce within ten days after the service thereof, under oath, all documents in his custody or power relating to the matters in question, saving all just exceptions. R.S.P.E.I. 1974, Cap. C-20, s.31.

Production of
documents upon
order

32. The order shall require the other party to deposit the documents with the prothonotary; and upon the documents being produced, the party requiring the production, or his agent, attorney or solicitor, may inspect the same and take examined copies thereof. R.S.P.E.I. 1974, Cap. C-20, s.32.

Inspection of
documents,
procedure

33. The order for the production of documents shall not require personal service, and it shall be sufficient to serve the same upon the agent, attorney or solicitor of the party. R.S.P.E.I. 1974, Cap. C-20, s.33.

Service of
documents

34. Any party who neglects or refuses to obey an order for the production of documents may be punished as for a contempt of court. R.S.P.E.I. 1974, Cap. C-20, s.34.

Failure to obey
order, contempt

35. The prothonotary shall, as soon as possible, make out a list of all petitions presented under this Act, and which are at issue, placing them in the order in which they were presented, and shall keep at his office a copy of such list open to the inspection of any person. R.S.P.E.I. 1974, Cap. C-20, s.35.

List of petitions

36. Such petitions, as far as conveniently may be, shall be tried in the order in which they stand on such list. R.S.P.E.I. 1974, Cap. C-20, s.36.

Trial of petitions,
order of

Several petitions <i>re</i> same election, dealt with as one	37. When, under this Act, more petitions than one are presented relating to the same election or return, all the petitions shall, in the election list, be bracketed together, and shall be dealt with, as far as may be, as one petition; but the petitions shall stand in the election list in the place where the last presented of them would have stood if it had been the only one presented as to such election or return, unless the court otherwise orders. R.S.P.E.I. 1974, Cap. C-20, s.37.
Court to hear trial, jurisdiction	38. (1) Every election petition shall be tried by one judge without a jury, and it shall be competent for the judge on the trial to decide any question raised as to the admissibility of the evidence offered or to receive such evidence under reserve and subject to adjudication at the final hearing.
Place of trial	(2) The trial of an election petition shall take place in the electoral district, the election or return for which is in question; but, if it appears to the court that special circumstances exist, which make it desirable that the petition should be tried elsewhere than in such electoral district the court may appoint another place for the trial.
Notice of time and place of trial	(3) Notice of the time and place at which an election petition will be tried shall be given in the prescribed manner, and not less than fourteen days before that on which the trial is to take place.
Adjournment of trial from one place to another	(4) The trial judge may adjourn the trial and from one place to another in the same electoral district, or upon cause shown supported by affidavit, where special circumstances exist, from one place to another outside the electoral district, or from a place inside to a place outside the electoral district or conversely. R.S.P.E.I. 1974, Cap. C-20, s.38.
Time within which trial to be commenced	39. (1) The trial of every election petition shall be commenced within six months from the time when the petition has been presented, and shall be proceeded with from day to day until such trial is over; but, if at any time, it appears to the court that the respondent's presence at the trial is necessary, the trial shall not be commenced during any session of the Legislative Assembly, if the respondent is a member; and in the computation of any time or delay allowed for any step or proceeding in respect of any such trial or for the commencement thereof, as aforesaid, the time occupied by the session of the Legislative Assembly shall not be included.
Substituted party to petition, where	(2) If, at the expiration of three months after the petition has been presented the day for trial has not been fixed, any elector may, on application, be substituted for the petitioner on such terms as the court thinks just. R.S.P.E.I. 1974, Cap. C-20, s.39.

- 40.** The court may, notwithstanding anything in section 39, enlarge the time for the commencement of the trial, upon an application for that purpose supported by affidavit. R.S.P.E.I. 1974, Cap. C-20, s.40. Time for trial enlarged, where
- 41.** The trial judge shall be received and attended at the place where he is about to try an election petition under this Act, if he is not resident there, in the same manner, so far as circumstances will admit, as if he was about to hold a regular sitting of the court of which he is a member. R.S.P.E.I. 1974, Cap. C-20, s.41. Manner of holding trial
- 42.** On the trial of an election petition and in other proceedings under this Act, the trial judge shall, subject to this Act, have the same powers, jurisdiction and authority as a judge of the Supreme Court presiding at the trial of an ordinary civil suit, and the court held by him for such trial shall be a court of record. R.S.P.E.I. 1974, Cap. C-20, s.42. Jurisdiction of court
- 43.** Unless the trial judge otherwise directs, any charge of corrupt practices may be gone into, and evidence in relation thereto received, before any proof has been given of agency on the part of any candidate in respect of such corrupt practices. R.S.P.E.I. 1974, Cap. C-20, s.43. Corrupt practices, jurisdiction to hear
- 44.** Witnesses shall be subpoenaed and sworn in the same manner as nearly as circumstances admit, as in cases within the jurisdiction of the Supreme Court. R.S.P.E.I. 1974, Cap. C-20, s.44. Witnesses, procedure
- 45.** (1) If it is made to appear to the court or the trial judge that any witness intends to leave the province and cannot attend the trial of an election petition, then on application to the court on notice to the parties to the petition, the court may grant an order for the examination of the witness at a time and place and before a person to be named in the order, and the witness may thereupon be examined touching the matter complained of in the petition, due notice of the time and place being given to the parties to the petition, who may, by their respective counsel, attend such examination, and examine and cross-examine the witness; and the examination shall be reduced to writing and signed by the witness, and when duly returned by the examiner and purporting to be certified by the examiner, may be used by either party to the petition on the trial thereof. Witness about to leave province, procedure
- (2) On the trial of an election petition under this Act, the trial judge may, by order under his hand, compel the attendance of any person as a witness who appears to him to have been concerned in the election to which the petition relates, and any person who refuses to obey such order is guilty of contempt of court. Persons compellable as witnesses
- (3) The trial judge may examine and re-examine any witness so compelled to attend or any person present, although such witness or Examination of witnesses

person is not called and examined by any party to the petition; and, after the examination of a witness as aforesaid by the trial judge, such witness may be cross-examined by or on behalf of the petitioner, and respondent, or either of them.

Apprehending
witness who fails to
attend etc.

(4) Upon proof to the satisfaction of the trial judge of the service of a subpoena upon any witness who fails to attend or to remain in attendance in accordance with the requirements of the subpoena, and that a sufficient sum for his fees as a witness has been duly paid or tendered to him and that the presence of the witness is material to the ends of justice, the trial judge may by his warrant, directed to any sheriff or officer of the court, or constable, cause the witness to be apprehended and forthwith brought before him or any other judge who may thereafter preside at such trial, to give evidence.

Detaining witness
in custody

(5) In order to secure his presence as a witness, the witness may be taken on the warrant before the trial judge and detained in the custody of the person to whom the warrant is directed, or otherwise as the trial judge may order, until his presence as the witness is required, or in the discretion of the trial judge he may be released on a recognizance with or without sureties conditioned for his appearance to give evidence. R.S.P.E.I. 1974, Cap. C-20, s.45.

Privilege or
incriminating
evidence not valid
as defense to
answering

46. No person shall be excused from answering any question put to him under this Act, touching and concerning any election, or the conduct of any person thereat, or in relation thereto, on the ground of any privilege or that the answer to such question will tend to criminate such person; but no answer given by any person claiming to be excused on the ground of privilege, or that the answer will tend to criminate himself, shall be used in any criminal proceeding against any person, other than indictment for perjury, if the trial judge gives to the witness a certificate that he claimed the right to be excused on the grounds aforesaid, and made full and true answers to his satisfaction. R.S.P.E.I. 1974, Cap. C-20, s.46.

Expenses of
witnesses

47. The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition under this Act, according to the scale allowed to witnesses on the trial of civil actions in the Supreme Court, may be allowed to such person by a certificate under the hand of the trial judge or of the prothonotary; and the expenses, if the witness was called and examined by the trial judge, shall be deemed part of the expenses of providing a court, and in other cases shall be deemed costs of the party calling the witness, and shall be assessed against the party interested in the trial of the petition as the trial judge determines. R.S.P.E.I. 1974, Cap. C-20, s.47.

- 48.** The trial judge may in his discretion, employ a shorthand writer to take down the oral evidence, given by witnesses at the trial of the petition, and the expense of employing the shorthand writer shall be costs in the cause. R.S.P.E.I. 1974, Cap. C-20, s.48. Transcribing evidence, cost of
- 49.** On the trial of a petition under this Act complaining of an undue return and claiming the seat for any person, the respondent may give evidence to show that the election of that person was undue in the same manner as if he had presented a petition complaining of the election. R.S.P.E.I. 1974, Cap. C-20, s.49. Evidence of respondent
- 50.** If, on the trial of an election petition, claiming the seat for any person, a candidate is proved to have been guilty, by himself or by any person on his behalf, of bribery, treating, or undue influence with respect to any person who voted at the election, or if any person retained or employed for reward by or on behalf of the candidate for all or any of the purposes of the election as agent, clerk, inspector of votes or messenger or in any other employment, is proved on the trial to have voted at the election, there shall, on the trial of the election petition, be struck off from the number of votes appearing to have been given to the candidate, one vote for every person who voted at the election, and who is proved to have been so bribed, treated or unduly influenced, or so retained or employed for reward as aforesaid. R.S.P.E.I. 1974, Cap. C-20, s.50. Undue influence on electors, one vote deducted for each elector influenced
- 51.** If it is found by the report of the trial judge that any corrupt practice has been committed by a candidate at an election, or by his agent, whether with or without the actual knowledge and consent of the candidate, the election of the candidate, if he has been elected, shall be void. R.S.P.E.I. 1974, Cap. C-20, s.51. Corrupt practices, election void
- 52.** If, on the trial of an election petition, a candidate is proved to have personally engaged any person at the election to which the petition relates, as a canvasser or agent in relation to the election, knowing that the person so engaged has, within eight years previous to the engagement, been found guilty of any corrupt practice, by any competent legal tribunal, or by the report of any judge or other tribunal for the trial of election petitions, the election of the candidate, if he has been elected, shall be void. R.S.P.E.I. 1974, Cap. C-20, s.52. Corrupt practices conviction of employee, affect on candidate
- 53.** Sections 50, 51 and 52 shall in no case apply to any acts done at any election other than the election to which the petition refers, except as to the personal acts of the candidates, and the acts of their agents done with the knowledge and consent of the candidates. R.S.P.E.I. 1974, Cap. C-20, s.53. Construction of sections 50, 51 and 52

- Corrupt practices, effect on election
- 54.** On the trial of an election petition, if it is proved that a candidate corruptly by himself, or by or with any other person, or by any other ways or means on his behalf, at any time, either before or during the election, directly or indirectly gave or provided or caused to be given or provided, or was accessory to the giving or providing or paid wholly or in part any expenses incurred for, any meat, drink, refreshment or provision to or for any person, in order to be elected or for being elected, or for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote at such election, there shall be struck off from the number of votes given for the candidate one vote for every person who has voted, and is proved on such trial to have corruptly accepted or taken any such meat, drink, refreshment or provision. R.S.P.E.I. 1974, Cap. C-20, s.54.
- Corrupt practice by or with knowledge of candidate
- 55.** If, on the trial of an election petition, it is proved that any corrupt practice has been committed by or with the actual knowledge and consent of a candidate at an election, or if the candidate is convicted before any competent court, of bribery, or undue influence, he shall be held guilty of corrupt practices and his election, if he has been elected, shall be void. R.S.P.E.I. 1974, Cap. C-20, s.55.
- Candidate guilty of offence rendering election void, mitigating factors
- 56.** If, on the trial of an election petition, the trial judge decides that a candidate at the election was guilty, by his agent or agents, of any offence that would render his election void, and further finds
- (a) that no corrupt practice was committed at the election by the candidate personally, and that the offences mentioned were committed contrary to the order and without the sanction or connivance of the candidate;
 - (b) that the candidate took all reasonable means for preventing the commission of corrupt practices at the election;
 - (c) that the offences mentioned were of a trivial, unimportant and limited character; and
 - (d) that in all other respects, so far as disclosed by the evidence, the election was free from any corrupt practice on the part of such candidate and of his agents,
- then the election of the candidate shall not, by reason of the offences mentioned, be void, nor shall the candidate be subject to any incapacity therefor. R.S.P.E.I. 1974, Cap. C-20, s.56.
- Personation, effect of on election
- 57.** If, on the trial of an election petition, a candidate is found by the report of the trial judge, by himself or his agent, with his actual knowledge and consent, to have aided, abetted, counselled or procured the commission at the election of the offence of personation by any person, his election, if he has been elected, shall be declared void. R.S.P.E.I. 1974, Cap. C-20, s.57.

- 58.** At the conclusion of the trial, the trial judge shall determine whether the member whose election or return is complained of or any and what other person was duly returned or elected, or whether the election was void, and other matters arising out of the petition, and requiring his determination, and shall, except in the case of appeal, within four days after the expiration of eight days from the day on which he has so given his decision, certify in writing his determination to the Speaker, appending thereto a copy of the notes of evidence. R.S.P.E.I. 1974, Cap. C-20, s.58. Judge's report
- 59.** (1) Every certificate and every report sent to the Speaker in pursuance of this Act shall be under the hand of the trial judge. Report, under hand of trial judge
- (2) The determination thus certified shall be final to all intents and purposes. R.S.P.E.I. 1974, Cap. C-20, s.59. Determination final
- 60.** When any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition relates, the trial judge shall, in addition to the certificate, and at the same time, report in writing to the Speaker Corrupt practice charged, judge's report to contain
- (a) whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, stating the name of the candidate, and the nature of the corrupt practice;
- (b) the names of any persons who have been proved at the trial to have been guilty of any corrupt practice;
- (c) whether corrupt practices have, or whether there is reason to believe that corrupt practices have, extensively prevailed at the election to which the petition relates; and
- (d) whether he is of opinion that the inquiry into the circumstances of the election has been rendered incomplete by the action of any of the parties to the petition, and that further inquiry as to whether corrupt practices have extensively prevailed is desirable. R.S.P.E.I. 1974, Cap. C-20, s.60.
- 61.** The trial judge may, at the same time, make a special report to the Speaker as to any matters arising in the course of the trial. R.S.P.E.I. 1974, Cap. C-20, s.61. Special report to Speaker
- 62.** Except where otherwise expressly provided by this Act, any order, act, application or thing for the purpose of this Act may be made or done by, to or before a single judge. R.S.P.E.I. 1974, Cap. C-20, s.62. Jurisdiction of court
- 63.** (1) When, upon the application of any party to an election petition duly made to the trial judge assigned to hear the petition, it appears to the Special case

judge that the case raised by the petition can be conveniently stated as a special case, the trial judge may direct the same to be so stated.

Jurisdiction to hear special case

(2) Any special case shall, as far as possible, be heard before the judge referred to in subsection (1), who shall thereupon give judgment as to justice appertains; and in case the decision is final, the trial judge shall certify to the Speaker his decision on the special case, in the manner and within the time hereinbefore provided in cases of election trials. R.S.P.E.I. 1974, Cap. C-20, s.63.

Appeals to the Appeal Division

64. An appeal by any party to an election petition, shall lie to the Appeal Division from

(a) the judgment, rule, order or decision on any preliminary objection to an election petition, the allowance of which objection has been final and conclusive and has put an end to the petition, or which objection, if it had been allowed, would have been final and conclusive and have put an end to the petition; but unless it is otherwise ordered, an appeal in the last mentioned case shall not operate as a stay of proceedings, nor shall it delay the trial of the petition; or

(b) the judgment or decision on any question of law or of fact of the judge who has tried such petition. R.S.P.E.I. 1974, Cap. C-20, s.64.

Security for costs to be filed before appeal

65. The party desiring to appeal shall within eight days from the day on which the decision appealed from was given, deposit with the Registrar of the Supreme Court at Charlottetown the sum of \$100 as security for costs, and also a further sum of \$10 as a fee for making up the record for the appeal, and the deposit shall be made in legal tender or in the bills of any chartered bank doing business in Canada. R.S.P.E.I. 1974, Cap. C-20, s.65; 1992, c.65, s.3.

Date for hearing appeal

66. Upon the deposit being so made the prothonotary shall make up the record in appeal, and the appeal shall be set down for hearing by the presiding judge of the court who shall name and appoint an early day for the hearing thereof by the court. R.S.P.E.I. 1974, Cap. C-20, s.66.

Notice of appeal

67. The party so appealing shall, within three days after the appeal has been so set down for hearing or within such other time as the court or a judge thereof may allow, give to the other parties to the petition affected by the appeal, or their respective attorneys, solicitors or agents by whom the parties were represented on the hearing of the preliminary objections or at the trial of the petition as the case may be, notice in writing of the appeal having been so set down for hearing as aforesaid and may in the notice if he so desires, limit the subject of the appeal to any special and defined question or questions. R.S.P.E.I. 1974, Cap. C-20, s.67.

68. The appeal shall thereupon be heard and determined by the court, which shall pronounce such judgment upon questions of law and fact as in the opinion of the court ought to have been given by the judge whose decision is appealed from; and the court may make such order as to the money deposited as aforesaid and as to the costs of the appeal as it thinks just; and in case it appears to the court that any evidence tendered at the trial was improperly rejected, the court may cause the witness or witnesses whose evidence was so rejected to be examined before the court or a judge thereof or upon commission. R.S.P.E.I. 1974, Cap. C-20, s.68.

Jurisdiction of court

69. The prothonotary shall thereupon transmit to the Speaker under the seal of the court the judgment and decision of the said court confirming, changing or annulling any decision, report or finding of the trial judge upon the several questions of law as well as of fact upon which the appeal was made; and therein shall certify as to the matters and things as to which the trial judge would have been required to report to the Speaker, whether they are confirmed, changed or annulled or left unaffected by the decision of the court, and the decision shall be final. R.S.P.E.I. 1974, Cap. C-20, s.69.

Judgment
transmitted to
Speaker

70. The Speaker shall without delay after he receives the certificate and report or reports, if any, of the trial judge or of the court, give the necessary directions and adopt all proceedings necessary for confirming or altering the return, or, except as hereinafter mentioned, for the issuing of a writ for a new election and in the event of the election of any member petitioned against being declared void and the seat not given to any other candidate at the election in question, the Speaker may notify the Lieutenant Governor in writing of the determination of the court or a judge as expressed in such certificate, and the Lieutenant Governor for the purpose of carrying the determination into execution may cause the issue of a writ for the election of a member to fill the vacancy caused by the voiding of such election. R.S.P.E.I. 1974, Cap. C-20, s.70.

Speaker, duties
upon receipt of
judgment

71. The Speaker shall at the earliest practicable moment after he receives the determination, report and certificates of the court or a judge aforesaid, communicate the same and his proceedings thereupon to the Legislative Assembly and the Legislative Assembly shall forthwith thereafter order the same to be entered in its journals and give the necessary directions for confirming or altering the return, or for issuing a writ for a new election or for carrying the determination into execution as the circumstances may require; and when the court or a judge makes a special report the Legislative Assembly may make such order in respect of such special report as it may consider proper. R.S.P.E.I. 1974, Cap. C-20, s.71.

Communication of
determination to
Legislative
Assembly

Writ of election where corrupt practices, by order of Legislative Assembly	72. When the trial judge or the court in appeal in the report on the trial of an election petition under this Act, states that corrupt practices have, or that there is reason to believe that corrupt practices have extensively prevailed at the election to which the petition relates or that he or they are of opinion that the inquiry into the circumstances of the election has been rendered incomplete by the action of any of the parties to the petition, and that further inquiry as to whether corrupt practices have extensively prevailed is desirable, no new writ shall issue for a new election in that case except by order of the Legislative Assembly. R.S.P.E.I. 1974, Cap. C-20, s.72.
Defraying costs incidental to election petition	73. All costs, charges and expenses of and incidental to the presentation of an election petition under this Act, and to the proceedings consequent thereon, with the exception of such costs, charges and expenses as are by this Act otherwise provided for, shall be defrayed by the parties to or those opposing the petition, in such manner and in such proportions as the court or trial judge determines, regard being had to the disallowance of any costs, charges or expenses which in the opinion of the court or trial judge have been caused by vexatious conduct, unfounded allegations or unfounded objections, on the part either of the petitioner or of the respondent, and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether the parties are or are not on the whole successful. R.S.P.E.I. 1974, Cap. C-20, s.73.
Assessing costs	74. The costs may be assessed according to the same scale and principles as costs are assessed between parties in actions in the Supreme Court, and such costs shall be recoverable in the same manner as the costs in the said actions in this province, or in such other manner as is prescribed. R.S.P.E.I. 1974, Cap. C-20, s.74.
Costs awarded payment	75. (1) If costs are awarded in favour of any party against any petitioner, that party shall, after the expiration of thirty days from the rendering of the decision by the trial judge, or in case of an appeal by the Appeal Division upon the production of a certificate of assessment from the proper officer, be entitled to receive out of the deposit the amount assessed to him as aforesaid.
Certificates exceed deposit, where	(2) If the total amount of the certificates so filed as aforesaid exceeds the deposit, then the party shall be entitled to recover out of the deposit his proportion thereof.
Execution against petitioner	(3) In the event referred to in subsection (2) the party shall be entitled forthwith to issue execution according to the practice in ordinary cases, against the petitioner's goods or lands, for the residue of the costs so assessed to him as aforesaid. R.S.P.E.I. 1974, Cap. C-20, s.75.

76. In appeals under this Act to the Appeal Division, the court may adjudge the whole or any part of the costs of the trial of the petition to be paid by either of the parties; and the same proceedings for the recovery of the costs may thereupon be taken as if the order for payment of costs had been made by the court or by the judge before whom the petition was tried. R.S.P.E.I. 1974, Cap. C-20, s.76.

Jurisdiction of court
to apportion costs

77. (1) If, on the trial of an election petition under this Act, it is proved that any corrupt practice has been committed by an agent of the candidate without his knowledge or consent, or if it is determined that the election is void by reason of any act of an agent committed without the knowledge and consent of the candidate, and the trial judge is of opinion that costs should be awarded to the petitioner or other party alleging the corrupt practice, the agent may be condemned to pay the costs.

Corrupt practice
committed without
knowledge of
candidate

(2) In the case referred to in subsection (1) the trial judge shall order that the agent be summoned to appear at a time fixed in the summons, in order to determine whether the agent shall be condemned to pay the costs.

Agent summoned

(3) If, at any time so fixed, the agent so summoned does not appear, he shall be condemned on the evidence already adduced, to pay the whole or due proportion of the costs awarded to the petitioner or other party aforesaid; and if he appears, the court or the trial judge after hearing the parties and such evidence as is adduced, shall give such judgment as to law and justice appertains.

Non-appearance of
agent, condemned
on evidence

(4) The party to receive the costs shall have process to recover the costs referred to in subsection (2) against the agent in like manner as he might have such process against the respondent; and no process shall issue against the respondent to recover those costs, nor shall the sum be paid out of any money deposited as security until after the return of process against the agent. R.S.P.E.I. 1974, Cap. C-20, s.77.

Recovery of costs
against agent

78. (1) No election petition under this Act shall be withdrawn without leave of the court or the trial judge, according as the petition is then before the court or before the trial judge, upon special application made in and at the prescribed manner, time and place.

Withdrawal of
election petition

(2) No application referred to in subsection (1) shall be made until the prescribed notice has been given, in the electoral district to which the petition relates, of the intention of the petitioner to make an application for the withdrawal of his petition.

Notice of
application

Substitution as petitioner, application for	(3) On the hearing of the application for withdrawal, any person who might have been a petitioner in respect of the election to which the petition relates may apply to the court or trial judge to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition.
Substitution by court	(4) The court or trial judge may, if it or he thinks fit, substitute as petitioner any applicant as aforesaid, and may also, if the proposed withdrawal is, in the opinion of the court or trial judge, induced by any corrupt bargain or consideration, order that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that, to the extent of the sum named in the security, the original petitioner shall be liable to pay the costs of the substituted petitioner.
Security required of substituted party	(5) If no order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within the prescribed time after the order of substitution.
Position of substituted petitioner	(6) Subject as aforesaid, a substituted petitioner shall stand in the same position, as nearly as may be, and be subject to the same liabilities as the original petitioner.
Petition withdrawn, costs of respondent	(7) If a petition is withdrawn the petitioner shall be liable to pay the costs of the respondent, unless the court or trial judge otherwise orders, and when there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners. R.S.P.E.I. 1974, Cap. C-20, s.78.
Opinion of court that withdrawal corrupt, where	79. In every case of withdrawal of an election petition under this Act, if the court or trial judge is of opinion that the withdrawal of the petition was the result of any corrupt arrangement or in consideration of the withdrawal of any other petition, the court or trial judge shall report that opinion to the Speaker, stating the reasons therefor and the circumstances attending the withdrawal. R.S.P.E.I. 1974, Cap. C-20, s.79.
Abatement of election petition	80. (1) An election petition under this Act shall be abated by the death of a sole petitioner, or of the survivor of several petitioners.
Liability not affected by	(2) The abatement of a petition shall not affect any liability for the payment of costs previously incurred.
Notice of abatement	(3) On the abatement of a petition the prescribed notice of the abatement having taken place shall be given in the electoral district to which the petition relates; and within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the

election to which the petition relates may apply to the court or trial judge, in the prescribed manner, and at the prescribed time and place, to be substituted as a petitioner.

(4) The court or trial judge may substitute as a petitioner any applicant who is desirous of being substituted, and on whose behalf security to the same amount is given as is required in the case of a new petition. R.S.P.E.I. 1974, Cap. C-20, s.80.

Substituted petitioner

81. (1) If, before or during the trial of an election petition under this Act,
 (a) the respondent dies;
 (b) the Legislative Assembly resolves that the respondent's seat is vacant; or
 (c) the respondent gives notice to the court or trial judge in and at the prescribed manner and time, that he does not intend to oppose or further to oppose the petition,
 notice of the event shall be given in the prescribed manner in the electoral district to which the petition relates.

Respondent unable to continue proceedings, notice

(2) Within the prescribed time after the notice is given, any person who might have been a petitioner in respect to the election to which the petition relates, may apply to the court or trial judge to be admitted as a respondent to oppose the petition or so much thereof as remains undisposed of, and that person shall, on the application, be admitted accordingly to oppose the petition or the undisposed of portion thereof, either with the respondent, if there is one, or in place of the respondent; and any number of persons not exceeding three, may be so admitted.

Substitution as respondent

(3) If either of such events happens during the trial, the trial judge shall adjourn the same, in order that notice that the event has happened may be given as herein provided; and the person or persons so admitted shall be subject to the same liability as the respondent with respect to any costs thereafter incurred. R.S.P.E.I. 1974, Cap. C-20, s.81.

Adjournment of proceeding for notice

82. Notwithstanding the abatement of a petition by reason of the death of the respondent, the court or trial judge may order the payment of costs previously incurred, and the payment out of court of any moneys deposited as security for costs. R.S.P.E.I. 1974, Cap. C-20, s.82.

Death of respondent, award of costs against

83. A respondent who has given the prescribed notice that he does not intend to oppose or further oppose the petition shall not be allowed to appear or act as a party against the petition in any proceedings thereon, and shall not sit or vote in the Legislative Assembly until the Legislative Assembly has been informed of the report on the petition; and the court or trial judge shall, in all cases in which the notice has been given in the

Respondent not permitted to resume seat until

prescribed time and manner, report the same to the Speaker. R.S.P.E.I. 1974, Cap. C-20, s.83.

Double return,
complaint in
election petition

84. When an election petition under this Act complains of a double return, and the respondent has given notice in the prescribed time and manner that it is not his intention to oppose the petition, and no party has been admitted, in pursuance of this Act to oppose the petition, then the petitioner, if there is no petition complaining of the other member returned on the double return, may withdraw his petition by notice addressed to the prescribed officer, and upon such withdrawal, the prescribed officer shall report the fact to the Speaker, and the Legislative Assembly shall thereupon give necessary directions for amending the said double return. R.S.P.E.I. 1974, Cap. C-20, s.84.

Making rules of
court

85. (1) The judges of the Supreme Court may make rules for the effectual execution of this Act and of the intention and object thereof, and the regulation of the practice and procedure and costs with respect to election petitions and the trial thereof, and the certifying and reporting thereon.

Effect of rules

(2) Any rules made as aforesaid, and not inconsistent with this Act, shall be deemed to be within the powers conferred by this Act, and shall, while unrevoked, be of the same force as if they were herein enacted, and the same shall be laid before the Legislative Assembly within ten days after they are made, if the Legislative Assembly is then in session, and if the Legislative Assembly is not then in session, within ten days after the beginning of the next session of the Legislative Assembly. R.S.P.E.I. 1974, Cap. C-20, s.85.

Interim rules of
court

86. Until rules of court have been made by the judges of the court in pursuance of this Act, and so far as the rules do not extend the principles, practice and rules on which election petitions touching the election of Members for the House of Commons in England were, on May 26, 1874, dealt with, those principles, practices and rules shall be observed so far as consistently with this Act they can be observed by the court and the judges thereof. R.S.P.E.I. 1974, Cap. C-20, s.86.

Time limitations
extension of

87. The court shall upon sufficient cause being shown, have power, on the application of any of the parties to a petition, to extend the period limited by this Act, for taking any steps or proceedings by such party. R.S.P.E.I. 1974, Cap. C-20, s.87.

Travelling and other
expenses

88. The travelling expenses of the trial judge, and all expenses incurred by the sheriff or other officer in consequence of any sitting for the trial of an election petition, and providing a court room and accessories, shall be

defrayed in like manner as ordinary travelling expenses of a judge in the province are payable. R.S.P.E.I. 1974, Cap. C-20, s.88.

89. Every person who, according to the law of this province, is entitled to practice as an attorney at law or solicitor, before the Supreme Court, may practice as attorney, solicitor or agent, and any person who, according to such law, is entitled to practice as a barrister-at-law or advocate before such court, may practice as counsel, in the case of a petition, and all matters relating thereto, before the court or trial judge. R.S.P.E.I. 1974, Cap. C-20, s.89.

Barrister acting as counsel

90. An election petition may be presented, and the trial of an election petition under this Act shall be proceeded with, notwithstanding the acceptance by the respondent of an office of profit under the Crown, or the resignation of his seat, but the respondent may, notwithstanding anything in this or any other Act contained, accept office at any time after the election, subject to any statute of this province relating to the same. R.S.P.E.I. 1974, Cap. C-20, s.90.

Resignation of seat etc. by respondent, effect on proceedings

91. (1) All elections shall be subject to the following provisions of this Act and any wilful offence against the nine clauses of this subsection is a "corrupt practice" within the meaning of this Act: every person who

Corrupt practices

- (a) directly or indirectly, by himself or by any other person on his behalf, gives, lends or agrees to give or lend, or offers or promises any money or valuable consideration, or promises to procure, or to endeavour to procure any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any person in order to induce any voter to vote, or refrain from voting, or corruptly does any such act on account of the voter having voted or refrained from voting at any election;
- (b) directly or indirectly, by himself or by any other person on his behalf gives or procures, or agrees to procure, or offers or promises any office, place or employment to or for any voter, or to or for any other person, in order to induce the voter to vote, or refrain from voting, or corruptly does any such act as aforesaid, on account of any voter having voted or refrained from voting at any election;
- (c) directly or indirectly, by himself or by any other person on his behalf, makes any gift, loan, offer, promise, procurement or agreement as aforesaid, to or for any person, in order to induce the person to procure or endeavour to procure the return of any person to serve in the Legislative Assembly or the vote of any voter at any election;
- (d) upon or in consequence of any gift, loan, offer, promise, procurement or agreement, procures or engages or promises or

endeavours to procure the return of any person to serve in the Legislative Assembly or the vote of any voter at an election;

(e) advances or pays, or causes to be paid, any money to or to the use of any other person, with the intent that the money or any part thereof shall be expended in bribery or corrupt practices at any election, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery or corrupt practices at any election;

(f) directly or indirectly by himself or by any other person on his behalf, on account of and as payment for voting or for his having voted, or for illegally agreeing or having agreed to vote for any candidate at an election, or on account of and as payment for his having illegally assisted or agreed to assist any candidate at an election, applies to the candidate, or to his agent or agents, for the gift or loan of any money or valuable consideration or for the promise of the gift or loan of any money or valuable consideration or for any office, place or employment, or the promise of any office, place or employment;

(g) before or during an election, directly or indirectly, himself or by any other person on his behalf, receives, agrees or contracts for any money, gift, loan or valuable consideration, office, place or employment, for himself or any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election;

(h) after an election, directly or indirectly, himself or by any other person on his behalf, receives any money or valuable consideration for having voted or refrained from voting, or for having induced any other person to vote or refrain from voting at an election; or

(i) in order to induce a person to allow himself to be nominated as a candidate, or to refrain from becoming a candidate, or to withdraw, if he has become a candidate, gives or procures any office, place or employment, or agrees to give or procure, or offers or promises to procure or endeavours to procure any office, place or employment for such person,

shall be disqualified for a term of eight years thereafter from voting at an election or holding any office in the nomination of the government of this province and shall also forfeit the sum of \$200 and costs to any person who sues therefor: but the actual personal expenses of any candidate, his expenses for actual professional services performed, and payments in good faith for the fair cost of printing and advertising, or of halls or rooms for the holding of meetings, shall be held to be expenses lawfully incurred and the payment thereof shall not be a violation of this Act.

(2) Every candidate who corruptly, by himself or by or with any other person, or by any other ways or means on his behalf, at any time, either before or during any election, directly or indirectly gives or provides, or causes to be given or provided, or is accessory to the giving or providing, or pays wholly or in part any expenses incurred for any meat, drink, refreshment or provision to or for any person, in order to be elected or for being elected, or for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at that election, is guilty of the offence of treating, and shall forfeit the sum of \$200 to any person who sues therefor with costs in addition to any other penalty to which he is liable therefor under any other provision of this Act.

Undue influence on elector, offence and penalty

(3) Every candidate or other person who, at an election, either provides or furnishes drink or other refreshment at the expense of the candidate to an elector during the election, or pays for, procures or engages to pay for any drink or other refreshment, is guilty of an offence and liable to a fine of \$100.

Furnishing drink an offence, penalty

(4) The giving of or causing to be given to any voter on the nomination day or day of polling, on account of the voter having voted or being about to vote, any meat, drink or refreshment, or any money or ticket to enable the voter to procure refreshment, shall be deemed an unlawful act, and the person so offending shall forfeit the sum of \$10 for each offence to any person who sues therefor, with costs.

Procurement of refreshment, unlawful act, offence & penalty

(5) Every one who, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of, any force, violence, or restraint, or inflicts, or threatens the infliction, by himself or by or through any other person, or of any injury, damage, harm or loss, or in any manner practices intimidation upon or against any person to vote for any candidate, or to refrain from voting, or on account of such person having voted for any candidate or refrained from voting at an election, or who, by abduction, duress, or any false or fraudulent pretense, device or contrivance, impedes, prevents or otherwise interferes with the free exercise of the franchise of any voter, or thereby compels, or induces or prevails upon any voter either to vote for any candidate or to refrain from voting at an election, shall be deemed to have committed the offence of undue influence, and shall in addition to any penalty thereby incurred, forfeit the sum of \$200, to any person who sues therefor, with costs.

Violence or threatened violence, offence and penalty

(6) The hiring or paying for or promising to pay for any horse, team, carriage, cab, cart, wagon, sleigh, motor vehicle, or other conveyance, or any boat, steamboat or other vessel, by any candidate or his agent, or by any person on behalf of any candidate, for the purpose of conveying any

Hiring conveyance to transport electors unlawful, offence and penalty

voter or voters to or from the poll or to or from the neighborhood thereof at any election, or the payment by any candidate or his agent, or by any person on behalf of any candidate, of the travelling or other expenses of any voter in going to or returning from the poll at any election are unlawful acts; every candidate or other person so offending shall, by that very fact, be disqualified from voting at such election and for every offence shall forfeit the sum of \$100 to any person who sues therefor.

Letting to hire conveyance to transport electors, unlawful, offence and penalty

(7) Every person letting to hire, or demanding or receiving from any candidate or his agent or other person on behalf of any candidate, payment for the use of any horse, team, carriage, cab, cart, wagon, sleigh, motor vehicle or other conveyance or any boat, steamboat or other vessel, for the purpose of conveying any voter or voters to or from the poll or to or from the neighbourhood thereof at any election, is guilty of an unlawful act and shall, by that very fact, be disqualified from voting at the election and for every offence shall forfeit the sum of \$100 to any person who sues therefor: but nothing in this subsection or subsection (6) shall be construed as forbidding or making it unlawful that a voter should pay in good faith the usual fare or a reasonable charge for being conveyed to or from the poll.

Personation an offence, penalty

(8) Every person is guilty of personation and liable to a fine of not more than \$200 and not less than \$50, and to imprisonment for a term not exceeding two years and not less than three months, who, at an election

- (a) applies to vote in the name of some other person, whether the name is that of a person living or dead, or of a fictitious person; or
- (b) having voted once at any such election, applies to vote at the same election.

Abetting offence of personation, offence and penalty

(9) Every person who aids, abets, counsels or procures the commission by any person of the offence of personation shall be liable to a fine of not more than \$200 and not less than \$100 and to imprisonment for a term not exceeding two years and not less than three months.

Taking false oath, offence and penalty

(10) Every candidate who corruptly by himself or by or with any other person on his behalf compels or induces or endeavors to induce any person to personate any voter, or to take any false oath in any matter wherein an oath is required under this Act, is guilty of an offence, and shall in addition to any other punishment to which he is liable for the offence, forfeit the sum of \$200 to any person who sues therefor.

Voting in an election where not qualified, offence and penalty

(11) Every person who votes or induces or procures any person to vote at an election, knowing that he or such person is not entitled to vote thereat, is guilty of an unlawful act, and shall forfeit the sum of \$100 to any person who sues therefor with costs; and in any suit for the recovery

of the penalty, the burden of the proof of the person being entitled to vote at the election shall be upon him and not upon the person suing.

(12) Any person who, before or during an election, knowingly publishes a false statement of the withdrawal of a candidate at the election, for the purpose of promoting or procuring the election of another candidate, is guilty of an unlawful act and shall forfeit the sum of \$100 to any person who sues therefor, with costs.

Publishing false statement, offence and penalty

(13) A candidate shall not be liable, nor shall his election be voided, for any unlawful act under subsections (11) and (12) committed by his agent. R.S.P.E.I. 1974, Cap. C-20, s.91.

Liability of candidate restricted

92. (1) If, on the trial of an election petition, it is determined that any person has been guilty of a corrupt practice within the meaning of this Act, or if on the trial, there is in the opinion of the trial judge sufficient evidence available that any person has been guilty of corrupt practice to warrant his being put on his trial, the trial judge shall order that such person shall be summoned to appear at a time and place to be fixed in the summons in order to be summarily tried for the offence, which shall be specified in the summons.

Summary trial of corrupt practices

(2) The time so fixed shall not be more than thirty days from the date of the summons and the place shall be the nearest convenient court house or other available room. R.S.P.E.I. 1974, Cap. C-20, s.92.

Time for trial

93. The trial judge may by recognizance bind the person to appear at the said time and place to be tried, and may by recognizance bind any person whom he considers necessary to be examined touching the matter to attend at the said time and place, and give evidence upon the trial. R.S.P.E.I. 1974, Cap. C-20, s.93.

Binding person to appear

94. Any recognizance referred to in section 93 shall be of the same effect and any forfeiture thereof shall be enforced in the like manner, and any refusal to enter into the same shall entail the same consequences, as if the recognizance had been given or required in the Supreme Court under its criminal jurisdiction within the province. R.S.P.E.I. 1974, Cap. C-20, s.94.

Recognizance, effect and procedure

95. No such summons, in respect of a corrupt practice shall be issued or prosecuted if it appears to the trial judge that a criminal prosecution for the same matter against the same person has been tried before the issue of the summons. R.S.P.E.I. 1974, Cap. C-20, s.95.

Criminal prosecution, effect on proceedings

96. The trial judge shall forthwith after the issue of the summons report to the Clerk of the Executive Council for the information of the

Report of summons to Lieutenant Governor in Council

Lieutenant Governor, the fact of the issuing thereof. R.S.P.E.I. 1974, Cap. C-20, s.96; 1980, c.2, s.3.

Witnesses to
summary trial

97. The Attorney General or other officer on whom, in case the person has been charged with an indictable offence the like duty would have devolved, shall subpoena to attend at the trial the witnesses who, at the trial of the election petition, deposed to any facts material to the charge and such other witnesses as he thinks requisite to prove the charge. R.S.P.E.I. 1974, Cap. C-20, s.97; 1993, c.29, s.4; 1997,c.20,s.3; 2000, c.5,s.3.

Due prosecution,
instructions *re*

98. The Attorney General may instruct counsel to assist the local authorities in the due prosecution of the accused. R.S.P.E.I. 1974, Cap. C-20, s.98; 1993, c.29, s.4; 1997,c.20,s.3; 2000,c.5,s.3.

Accused fails to
appear

99. If the accused, being duly served a reasonable time before the time fixed for the trial, or being bound by recognizance to appear to be tried, fails to appear at the time and place fixed for the trial, the trial may be proceeded with in his absence. R.S.P.E.I. 1974, Cap. C-20, s.99.

Trial judge unable
to attend

100. If the trial judge is unable to attend, then, at the request of the trial judge one of the judges of the Supreme Court shall, without a jury and in a summary manner try the accused, and shall hear counsel for the prosecution and also, if the accused is present, such accused or his counsel, and also such evidence as is adduced on either side. R.S.P.E.I. 1974, Cap. C-20, s.100.

Trial procedure

101. The judge trying the accused shall be received and attended at the trial in the same manner, as far as circumstances admit, as if regular sittings of the Supreme Court were being held. R.S.P.E.I. 1974, Cap. C-20, s.101.

Travelling expenses

102. The travelling expenses of the judge trying the accused, and any expenses necessarily incurred by the sheriff or other officer in connection with the trial shall be defrayed out of any moneys provided by the legislature for the purpose. R.S.P.E.I. 1974, Cap. C-20, s.102.

Summary trial
court, court of
record

103. The judge trying the accused shall be, for all the purposes of the trial and the proceedings connected therewith or relating thereto, a court of record, and shall, subject to this Act, have the same powers, jurisdiction and authority as a judge sitting in the Supreme Court having criminal jurisdiction within the province; and the record of any such case shall be filed as part of the records of the Supreme Court. R.S.P.E.I. 1974, Cap. C-20, s.103.

104. Witnesses shall be summoned or subpoenaed and sworn in the same manner, as nearly as circumstances admit, as in cases in the Supreme Court. R.S.P.E.I. 1974, Cap. C-20, s.104.

Witnesses,
procedure

105. Any witness, summoned or subpoenaed to attend and give evidence at the trial whether for or against the accused, shall be bound to attend and remain in attendance throughout the whole trial; and if he fails so to do, he shall be held guilty of contempt of court. R.S.P.E.I. 1974, Cap. C-20, s.105.

Witnesses,
attendance

106. (1) Upon proof to the satisfaction of the summary trial court of the service of the subpoena upon any witness who fails to attend, and that the presence of the witness is material to the ends of justice, the summary trial court may, by its warrant, cause the witness to be apprehended and forthwith brought before it to give evidence and to answer for his disregard of the subpoena; and the witness may be detained on the warrant before the summary trial court or in the common jail with a view to secure his presence as a witness, or in the discretion of the summary trial court he may be released on a recognizance with or without sureties conditioned for his appearance to give evidence and to answer for his default in not attending as for a contempt.

Apprehension of
witnesses

(2) The summary trial court may, in a summary manner examine into and dispose of the charge of contempt against the witness, who, if found guilty thereof, shall be liable to a fine of \$100 or to imprisonment for ninety days, or to both. R.S.P.E.I. 1974, Cap. C-20, s.106.

Examination into
and disposition of
contempt charges

107. In case of conviction of a corrupt practice the offender shall be liable to imprisonment for a term of three months, and to a fine of \$200 and costs; and, if the fine and costs are not paid before the expiration of the term, then to imprisonment for such further time as they remain unpaid, not exceeding three months. R.S.P.E.I. 1974, Cap. C-20, s.107.

Imprisonment upon
conviction of
corrupt practice

108. All fines recovered under this Act shall belong to Her Majesty for the public uses of this province. R.S.P.E.I. 1974, Cap. C-20, s.108.

Fines recovered,
property of

109. A petition under this Act complaining of an undue or improper election or return of any candidate may, if presented not later than twenty days after the day of the return to the writ of election by the returning officer, be limited to a demand for a scrutiny of the votes polled at the election, and which have been marked "objected to"; and in case the petition is so limited, no other questions as to the undue return shall, in the proceedings under such petition for a scrutiny, be entered upon, excepting the scrutiny and determination of the validity of the objected votes properly brought before the court for its determination. R.S.P.E.I. 1974, Cap. C-20, s.109.

Scrutiny of votes

Rules of court *re*
scrutiny

110. The judges of the court may make rules to effectually carry out the provisions for a scrutiny and to ensure a proper scrutiny of all objected votes polled for any candidate at the election, properly brought before them for scrutiny and adjudication, and may prescribe the times within which the names of the voters whose votes have been challenged and objected to shall be given by the petitioner to the candidate declared elected and by the latter to the petitioner. R.S.P.E.I. 1974, Cap. C-20, s.110.

Adjudication on
scrutiny

111. At the close of the scrutiny referred to in section 110 the trial judge shall confirm or amend the return of the returning officer, and declare which candidate has been duly elected; and the confirmation or amended return shall be certified by him to the Speaker and shall take the place of, and be substituted for, the return of the returning officer; and the trial judge shall make such order as to the costs as he thinks proper. R.S.P.E.I. 1974, Cap. C-20, s.111.

Limited petition for
scrutiny, effect of

112. The filing of the limited petition for a scrutiny shall in no way affect or prejudice the right of any voter to file and prosecute any other election petition on any other ground under this Act. R.S.P.E.I. 1974, Cap. C-20, s.112.